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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,955	10/01/2003	Lawrence A. Blaustein	8778CC	8142

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EXAMINER

SPISICH, MARK

ART UNIT PAPER NUMBER

1744

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

65

Office Action Summary	Application No. 10/676,955	Applicant(s) BLAUSTEIN ET AL.	
	Examiner Mark Spisich	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,12,14-21,29,31,33-35,38-40 and 53-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,12,14-21,29,31,33-35,38-40 and 53-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 38-40,54 and 55 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original specification and claims (keep in mind that this application is a **CONTINUATION** of an earlier filed application (09/993,167 and 10/367,373) went to great lengths to describe the different motions of the two bristle supports. Although there is an embodiment wherein the tufts are all perpendicular to the top surface of the associated bristle support, there is support for at least some of the tufts being acutely angled with respect thereto as well as including different lengths (see page 14, line 29 thru page 15, line 14 and figs 20 and 21). The original specification does not mention anything about there being distinct rows as recited in claim 38, let alone the specific manner recited therein. Even if the top view in figs 8-8A can be said to disclose rows, there is no suggestion of the specific angled of the tufts in each of the rows as recited in claim 38. In addition, there is no support for claim 40 (the different cross-sectional tufts areas).

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3. Claims 6 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6, as amended, directly contradicts the claim from which it depends (claim #4). Claim 3 recites that the first bristle tufts is **shorter** than the second bristle tuft, while claim 6 recites exactly the opposite. Claim 1 was amended such that the reference to a "detachable head" has been removed. The reference thereto in claim 53 should probably be changed to -- elongate body --.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Derwent Acc No 1999-182385 (corresponding to DE 2021121) in view of DE 4412301. '385 discloses an electric toothbrush comprising a handle in which is housed a battery (8) for (presumably) providing power to a motor as well as a first and second (any one of the bristle supports 3) disposed on a head (2) having a longitudinal axis wherein each of the bristle uppers or holders (3) including a plurality of bristle tufts (1) and further wherein each of the bristle holders is operatively coupled to (presumably) a motor such that can reciprocate along the longitudinal axis of the head (see the attached figures). Each of the holders (3) can be reasonably said to be "at" the second end of the head. '385 discloses the invention substantially as claimed with the exception of at least one bristle

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tuft one the second holder being disposed at an acute angle relative to the support surface of the holder. '301 discloses an electric toothbrush including a plurality of bristle tufts (8) disposed at an acute angle (α in fig 4) relative to the supporting surface of the holder. It would have been obvious to one of ordinary skill to have modified the bristles of '385 as such to better reach in between the teeth as the holders are reciprocated.

3. Claims 1,2,4-7,17 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauman (USP 5,353,460) in view of Brown, Jr. et al (US PUB 2002/0138926) and Hirabayashi (USP 5,099,536). The patent to Bauman discloses an electric toothbrush comprising a handle (A) with a motor (12), power source (batteries: column 2, line 52) and a shaft (30) as well as first and second (2) bristle holders which each oscillate (column 1, lines 6-7) about an axis perpendicular to the axis of the head (B) and each of the holders including a plurality of bristle tufts. The patent to Bauman discloses the invention substantially as claimed with the exception of (1) a rechargeable power source; and (2) the particular angling of the tufts. The patent to Hirabayashi discloses an electric toothbrush (10) including a rechargeable power source (80) (column 1, lines 55-58). The use of such a power source would be obvious to one of ordinary skill so that the battery(ies) need not be replaced. Brown discloses a brush head (two embodiments in fig 3 and 5-9) each of which includes a plurality of bristle tufts(52,54,56,58,60,62 in figs 5-9 and 16,18,20,22,24,26 in fig 3) and further wherein a number of the tufts are oriented at an angle relative to the surface of the holder (eg, 56,58,60,62 in fig 6, with 60 being angled toward the periphery of the holder) as well as

a number of tufts (52,54 in fig 6 and 16,18 in fig 3) which are oriented perpendicular to the holder. The type of holder in Brown is analogous to that of Bauman (oscillating disc type) and one of ordinary skill would deem it obvious to substitute the particular holder of Brown for each of those of Bauman such that all of the tooth surfaces and crevices could be more easily cleaning. With respect to claim 1, any two of the tufts (52 or 54) would be the recited third and fourth tufts and any two of the tufts (56,58,60,62) would be the first and second tufts. The tufts (60) would read on the at least one tuft on the second bristle holder which is angled and directed toward the handle (the ones closest to the handle would meet claims 1 and 2). Brown also discloses tufts of different height (claims 4-6) (paragraphs 0023-0029 and 0037-0042). With regard to claim 7, the some of the tufts (60) would read on the ones directed toward the handle and others on the ones (claim 7) away from the handle. Both holders of Bauman move (claim 17). With regard to claim 56, each of the first and second holders can be said to include first and second pluralities of bristle tufts (a first including #s 52,54 and a second including #s 56-62). A broadest reasonable interpretation of claim 56 would be that all of the "plurality" including the tufts 56-62 are angled (even though there is another "plurality" including perpendicular tufts).

4. Claims 1,2,4-7,12,14-17 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauman (USP 5,353,460) in view of Kraemer (USP D465,655) and Hirabayashi (USP 5,099,536). The basic disclosure of Bauman (and the use of a rechargeable power source as taught by Hirabayashi) was addressed above and need not be repeated. The patent to Kraemer also discloses a disc brush for a toothbrush

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(more than likely for an electric toothbrush) which is analogous to the bristle holders (2) of Bauman and which include a plurality of bristle tufts which are angled relative to the surface of the holder (see especially figs 1-2) and further including a plurality of tufts which are perpendicular to the holder surface. It would have been obvious to one of ordinary skill to have substituted the disc brush of Kraemer for each of the brushes (2) of Bauman as it is shown to be an art-recognized equivalent disc brush for a toothbrush and also because such an arrangement would better clean the varied surfaces of the teeth. Upon such modification, the disc brush of Kraemer discloses the first and second angled tufts and the third and fourth perpendicular tufts of the first holder as well as the at least one angled tufts extending toward the handle (as the angled tufts extends around the entire periphery at least some would extend toward as well as away from the handle) (claims 2 and 7). The patent to Kraemer further discloses the height differences recited in claims 4-6. The central tuft and the first annular row of Kraemer (see fig 2) are taller than the annular row that includes the angled tufts (claims 12 and 14). The recess (54) reads on the slot (claim 15) of the first bristle holder (note that each of the holders 2 of Bauman may be said to be "at" the second end of the head) and the shaft passes under the second holder to the extend required by claim 16. Each of the holders (2) of Bauman is moveable (claim 17). See the paragraph above for the interpretation of claim 56.

5. Claims 1,2,4-7,12,14,16,17,18,53 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yukawa et al (USP 5,504,959) in view of Kraemer (USP D465,655) and Hirabayashi (USP 5,099,536). The patent to Yukawa discloses an

electric toothbrush comprising a handle (4) which includes a motor (42) and a battery (41) and a shaft (30,61,52) and a head portion (5) including first and second bristle holders (56) each including a plurality of tufts (57) and further wherein the first holder oscillates and the second holder can reciprocate (claims 18 and 53) along the head longitudinal axis (see the arrows in fig 1). The use of a rechargeable power supply in view of Hirabayashi was addressed above and need not be repeated. The substitution of the disc brush of Kraemer for each of the disc brushes of Yukawa would be obvious to one of ordinary skill as such a modification would meet the tuft arrangement claimed (see the more detailed description of Kraemer above). The remaining claims were essentially addressed above in the description of Kraemer.

6. Claims 19-21,29,31,33-35,57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yukawa et al (USP 5,504,959) in view of Kraemer (USP D465,655). It is first noted that claim 19 does not mention a rechargeable power supply (thus the absence of '536). As mentioned above, the patent to Yukawa discloses an electric toothbrush including first and second (56) bristle holders each including tufts and wherein a first holder is capable of oscillation and a second holder is capable of reciprocation along the axis of the head (see the arrows in fig 1). The disc brush of Kraemer discloses the tuft arrangement which meets the claim(s). The substitution of the disc brush of Kraemer in place of the ones of Yukawa would be obvious to one of ordinary skill for the same reason(s) set forth previously. Going back to Kraemer, it discloses a central tuft as well as a first annular tuft row (see fig 2) and further includes an intermediate annular tuft row which includes angled tufts which row

extend about the periphery of the holder (and as such includes some tufts extending both toward as well as away from the handle as in claims 19 and 20). The head of Yukawa is detachable from the handle (claim 21). Adjacent ones of the angled tufts would extend generally toward each other (claim 29). The third and fourth tufts (the central tufts in fig 2 of Kraemer) are taller than the first and second angled tufts (claims 31 and 33). See fig 3 of Yukawa for claims 34 and 35. See the comments above (paragraph #3) for the interpretation of claim 57.

Response to Arguments

7. Applicant's arguments filed 1 December 2004 have been fully considered but they are not persuasive. Applicant referred pointed out that, for example, claims 38-40 are "original claims". As the present application is a **CONTINUATION** of another application, these claims are **NOT** original claims insofar as 112-1st is concerned. The only original claims which could be used to support applicant's argument would be those of the parent application(s). **As this application is a continuation, this application is bound to the subject matter taught in the parent application.** Even if one were to interpret figs 8-8A as having rows, claim 38 recites much more than that in that it recites (claim 38, lines 15-18) a specific angular relationship between the bristle tufts of the trhe "rows". Such a relationship is not supported by the drawings. Applicant presented no other comments or arguments of any specificity. In fact, applicant has amended the claims such that they are significantly different in scope from the ones previously acted on. Even previously allowed claim 31 was changed significantly. For

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example, it went from requiring that the two angled tufts are of different height to claiming that one angled tuft is a different height than the perpendicular tuft.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

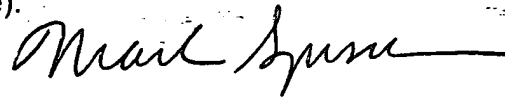
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (5:30-3:00), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich
Primary Examiner
Art Unit 1744

MS